

Significant Legislative Rule Analysis

Chapter 246-828 WAC

Rules Concerning Hearing and Speech

February 19, 2015

Describe the proposed rule, including a brief history of the issue, and explain why the proposed rule is needed.

In 2014, the Washington State Legislature passed Engrossed House Bill (EHB) 2108. The bill amended chapter 18.35 RCW by changing the “hearing instrument fitter/dispenser” license to a “hearing aid specialist” license. The bill created an additional pathway to licensure that requires:

- A two-year or four-year degree in a field of study approved by the board from an accredited institution;
- Completion of a nine-month board-approved certificate program offered by a board-approved hearing aid specialist program; and
- Practical and written examinations approved by the board.

EHB 2108 also required the Department of Health (department), with the Board of Hearing and Speech (board) and representatives from the community and technical colleges, to review the opportunity to establish an interim work-based learning permit, or similar apprenticeship opportunity, to provide an additional licensing pathway for hearing aid specialist applicants to meet licensure requirements. The workgroup met on June 24, July 1, and August 1, 2014. The workgroup reviewed the provisions of the nine-month certification pathway established by EHB 2108 and identified that the board may consider programs offered by board-approved hearing aid specialist programs, which could include accredited schools and other hearing aid specialist programs. The workgroup did not recommend a work-based learning permit or an apprenticeship because the board already has rules in place that allow work-based learning as part of an educational program. The workgroup reviewed all objectives they were asked to consider and recommended incorporating the provisions of EHB 2108 into existing rules. The Report to the Legislature was submitted on February 5, 2015. Proposed changes to chapter 246-828 WAC implement this legislation and incorporate workgroup recommendations.

RCW 43.70.041 requires a review of rules every five years. The board is proposing general updates and housekeeping revisions that will meet the requirements of SSB 5679. The board is proposing adding continuing education requirements for speech-language pathology assistants, adding multicultural education as an acceptable continuing education category, updating exam standards, and correcting the audiology and speech-language pathology national exam name and scoring standards.

In addition, updating sexual misconduct rules will establish clearer standards of conduct for professions regulated by the board and the secretary. Sexual misconduct rules will be updated to make them consistent with the secretary-regulated profession rules.

Also, RCW 18.340.020 directs each regulatory authority to adopt rules for temporary practice permits for military spouses. The board is proposing rules to implement this statute.

Is a Significant Analysis required for this rule?

Yes, portions of the proposed rules meet the definition of a legislatively significant rule in RCW 34.05.328 and require a significant analysis. However, the department has determined that no significant analysis is required for the following rules:

Table: Non-Significant Rule Identification-Reason

#	WAC Section	Section Title/Subject	Reason
1	246-828-025	Definitions	Terms defined in this section clarify meaning. The proposed changes to this section repeat what is in statute, RCW 18.35.010, and clarify terms used throughout the chapter.
1	246-828-040	Examination review and appeal procedures – hearing aid specialist	The proposed changes provide clarification and make other general housekeeping updates without changing the effect of the rule.
2	246-828-045	Interim permit – audiologist and speech-language pathologist	The proposed changes make housekeeping updates and provide clarification that this rule applies to interim permits for audiologists and speech-language pathologists. The proposed changes do not the effect of the rule.
3	246-828-04503	Postgraduate professional work experience – audiologist and speech-language pathologist	The proposed changes provide clarification that this rule applies to postgraduate professional work experience for audiologists and speech-language pathologists. The proposed changes do not change the effect of the rule.
4	246-828-04505	Supervisor delegation – for audiologist and speech-language pathologist interim permit holders	The proposed changes make housekeeping updates and provide clarification that this rule applies to supervisors of audiologist and speech-language pathologist interim permit holders. The proposed changes do not change the effect of the rule.
5	246-828-080	Minimum standards of equipment	The proposed changes make general housekeeping updates and do not change the effect of the rule.
6	246-828-090	Standards for equipment calibration	The proposed changes make general housekeeping updates and do not change the effect of the rule.
7	246-828-095	Audiology minimum standards of practice	The proposed changes make general housekeeping updates and do not change the effect of the rule.

#	WAC Section	Section Title/Subject	Reason
8	246-828-100	Hearing instrument fitting and dispensing minimum standards of practice	The proposed changes reorganize sections of the rule and make housekeeping changes to provide clarification. The proposed changes do not change the effect of the rule.
9	246-828-105	Speech-language pathology minimum standards of practice	The proposed changes make general housekeeping updates and do not change the effect of the rule.
10	246-828-112	Speech-language pathology assistants minimum standards of practice	The proposed changes provide clarification of the process without changing the effect of the rule.
11	246-828-220	Unfair or deceptive practices, unethical conduct and unfair methods of competition – Used or rebuilt products	The proposed changes make general housekeeping updates and do not change the effect of the rule.
12	246-828-270	Personal disclosure	The proposed changes provide clarification and make general housekeeping updates. The proposed changes do not change the effect of the rule.
13	246-828-305	How to obtain a temporary practice permit while the national background check is completed	The proposed changes make housekeeping updates changing the “hearing instrument fitter/dispenser” credential to a “hearing aid specialist” credential. The proposed changes do not change the effect of the rule.
14	246-828-315	Temporary practice permit – military spouse	The proposed new rule is a requirement of RCW 18.340.020 and adopts the department’s process for issuing these permits.
15	246-828-320	Minimum standards for fitting and dispensing locations	The proposed changes make general housekeeping updates without changing the effect of the rule.
16	246-828-330	Notice of availability and location of follow-up services	The proposed changes make general housekeeping updates without changing the effect of the rule.
17	246-828-350	Reasonable cause for rescission	The proposed changes make general housekeeping updates without changing the effect of the rule.
18	246-828-370	HIV/AIDS prevention and information education requirements	The proposed change corrects the “HIV/AIDS” reference in the title without changing the effect of the rule.
19	246-828-570	Adjudicative proceedings	The proposed change corrects a typographical error without changing the effect of the rule.
20	246-828-605	Site review procedures for initial and continuing approval of programs in hearing aid specialist instruction	The proposed changes make general housekeeping updates. The changes include nine-month certification programs in site review procedures.

#	WAC Section	Section Title/Subject	Reason
21	246-828-610	Process for rescinding approval of a program for hearing aid specialist instruction	The proposed changes make general housekeeping updates and include clarification that a program can appeal the board's decision in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW.
22	246-828-617	Requirements for speech-language pathology assistant certification	The proposed changes make general housekeeping updates that remove an outdated subsection of the rule.
23	246-828-620	Definitions-sexual misconduct	The proposed changes make general housekeeping updates without changing the effect of the rule.
24	246-828-625	Sexual misconduct	The proposed changes update sexual misconduct rules to provide clearer standards of conduct without changing the effect of the rule. The changes provide clarity and consistency with the department's enforcement of the rule.
25	246-828-990	Hearing aid specialist, audiologist, speech language pathologist, and speech language pathology assistant fees and renewal cycle	The proposed change makes a housekeeping update changing the "hearing aid fitter/dispenser" credential to a "hearing aid specialist" credential.

The board is proposing to repeal the following rule section because petitions for declaratory rulings are covered under the Administrative Procedure Act, chapter 34.05 RCW.

#	WAC Section	Section Title/Subject
24	246-828-360	Procedure for declaratory ruling

The remainder of this document will focus on those rules that do require a significant analysis.

Clearly state in detail the general goals and specific objectives of the statute that the rule implements.

The general goal of Chapter 18.35 RCW is to ensure the availability of hearing and speech services to persons in need of such services. The statutory goal is to safeguard the public health, safety, and welfare and to assure the availability of services to individuals with communicative disabilities.

The rules implement the statutory intent by:

- Aligning existing rules with legislative changes that added a nine-month certificate program as a pathway to licensure for hearing aid specialists;
- Setting curriculum standards, site review procedures, and an approval process for nine-month certificate programs;
- Adding a provision for temporary practice permits for military spouses;
- Updating exam standards and implementing a practical exam requirement;

- Establishing continuing education requirements for speech-language pathology assistants and adding multicultural education as an acceptable category of continuing education;
- Establishing clearer standards of conduct by updating sexual misconduct rules; and
- Making general housekeeping and clarification changes.

Explain how the department determined that the rule is needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rule.

The proposed rules will achieve the authorizing statute's goals and objectives by providing up-to-date requirements that are clear, concise and necessary to ensure patient safety.

The department has assessed and determined that there are no feasible alternatives to rule making as rules are required by statute. Standards need to be established in rule to be enforced. The rules provide requirements for education, licensure, conduct, and consumer protection in order to safeguard public health, safety, and welfare.

Explain how the department determined that the probable benefits of the rule are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

The proposed rules that are significant are analyzed below. As discussed above, other proposed rules are not significant and are, therefore, not included in this analysis.

WAC 246-828-020 Examinations

Rule Overview – The proposed rule requires that all hearing and speech credential applicants take a jurisprudence exam as a requirement of licensure. The proposed rule implements a provision of EHB 2108 by requiring hearing aid specialist applicants who have a nine-month certificate to take a practical exam approved by the board. The proposed rule also updates the exam names and scoring standards for the audiology and speech-language pathology exams.

Rule Cost/Benefit Analysis – The proposed changes will benefit licensees and the public by ensuring licensees have adequate training to provide safe care to the public. The practical exam for hearing aid specialists is a statutory requirement and any additional cost to applicants will be based on the actual cost of administering the practical exam. The jurisprudence exam is a no-cost, online, open-book exam required for all hearing and speech professions (i.e., hearing aid specialists, audiologists, speech-language pathologists, speech-language pathology assistants, and interim or temporary permit holders). Requiring the exam will benefit the applicants by ensuring they are aware of applicable laws and rules. It will benefit the public by ensuring licensees are aware of laws and rules related to their profession.

WAC 246-828-075 Supervisors of students

Rule Overview – The proposed rule expands the existing rule to include supervisors of students enrolled in board-approved nine-month hearing aid specialist programs. The rule sets standards for the supervisor/supervisee relationship and limits the number of students supervised to three.

Rule Cost/Benefit Analysis – The proposed changes will ensure public safety by setting standards and qualifications for supervisors of students. There is no additional cost to the student or supervisor. The supervisor may be contracting at no cost with an approved educational program in order to ensure students are able to obtain practical experience while enrolled in an educational program. The supervisor and student will be reporting practical experience hours directly to the educational program. The board analyzed the role of the supervisor and the hearing aid specialist student. The board wanted to ensure hearing aid specialist students were supervised by qualified and actively practicing hearing aid specialists or audiologists. For this reason, the board added the requirement that the supervisor must have practiced for at least 36 of the last 48 months. The board also added a provision that a supervisor of hearing aid specialist students may only be in a supervisor/supervisee relationship with a maximum number of three students at a time. This was discussed extensively during the rules workshops and during the drafting of the report to the legislature required by EHB 2108. After discussion, the board determined that audiologists or hearing aid specialists could effectively supervise up to three hearing aid specialist students.

WAC 246-828-290 Purchaser rescission rights

Rule Overview – The proposed rule changes the provision that allows a seller of a hearing instrument to subtract the cost of custom-made earmolds when refunding the purchase price. The rule does not change the rescission rights of purchasers and continues to protect the public by allowing a rescission period. The proposed changes also include general housekeeping updates.

- The three-day cancellation period is not changed by this rule. A purchaser incurs no additional liability if cancelling within three days of signing the “Notice to Buyer.”
- The thirty-day rescission period is not changed by this rule. The proposed change is to the refund amount if the purchaser had custom-made earmolds. If a purchaser exercises his or her rescission right, the seller must refund all deposits, including any down payment, and must return all goods traded in as part of the agreement. After the hearing instruments are returned, the seller may keep either \$150 or 15 percent of the total purchase price, whichever is less, *plus the price originally charged for custom-made earmolds.*

Rule Cost/Benefit Analysis – While the proposed changes add the cost of custom-made earmolds to the amount a seller can keep from a rescinded sale, the intent of the rule is to protect the public by allowing a cancellation and/or rescission period. The “Notice to Buyer” accompanies every sale of a hearing instrument and outlines the cancellation and rescission periods. The board determined that custom-made earmolds are specific to an individual purchaser and should be billed/charged as such. Earmolds cannot be resold or reused as a hearing instrument can. The cost of an earmold ranges from approximately \$50 to \$225, depending on the type of hearing instrument. The benefit to the public of a cancellation and rescission period remains the same.

WAC 246-828-510 Continuing education

Rule Overview – The speech-language pathology assistant (SLPA) profession was added through legislation in 2009 and implemented in 2010. At the time of implementation the board did not have the authority to establish continuing education (CE) requirements for SLPAs. The board was granted the authority during the 2010 legislative session. Due to the rules moratorium under the Governor’s Executive Orders 10-06 and 11-03, the board did not implement CE for SLPAs. The proposed rules set CE requirements for SLPAs equivalent to the CE requirements for the other hearing and speech professions. The requirement is 30 hours every three years. The proposed rules also allow multicultural education as an acceptable CE category with a maximum of five allowable hours. This category of CE will assist with removing barriers to access care for certain individuals. The proposed rules also ensure that at least 25 of the 30 hours of CE be related to profession specific skills and competencies.

Rule Cost/Benefit Analysis

The cost of continuing education courses ranges from no cost to several hundred dollars. The proposed rules do add a new cost for certified SLPAs, but brings the CE requirement in line with the other hearing and speech professions. The benefit of continuing education is to ensure the highest quality professional care and the objectives are to improve and increase the ability of the professional to deliver the highest possible quality professional care and keep the professional abreast of current developments. The proposed rule benefits credential holders by adding an additional CE category of multicultural education. The board added the provision that at least 25 of the 30 hours be related to profession specific skills and competencies to ensure credential holders take CE courses related to their profession, as opposed to only taking CE courses related to marketing or running a business.

WAC 246-828-600 Approval of programs for hearing aid specialist instruction

Rule Overview – The proposed rule implements provisions of EHB 2108 and the workgroup’s recommendations in the report to the legislature required by EHB 2108. EHB 2108 added a nine-month certificate program as a route to licensure for hearing aid specialists. The proposed changes add a nine-month certificate program to the approval requirements and processes for hearing aid specialist programs. Two-year degree programs in hearing aid specialist instruction were already in the rule. The rule outlines the legislative requirements for licensure as a hearing aid specialist and establishes an approval process educational programs must go through to be approved by the board.

Rule Cost/Benefit Analysis

There are two educational options that meet the requirement for licensure. One is a two-year degree in hearing aid specialist instruction. The other is completion of a nine-month certificate program with an underlying two-year or four-year degree. There are no approved nine-month programs to compare the actual cost (anticipated approval in July 2015). The availability of nine-month programs will provide an alternate pathway to licensure, thus enabling more candidates to enroll in hearing aid specialist programs. A clear application and approval process ensures quality educational programs for hearing aid specialist instruction. The rule implements the second educational option, a nine-month certificate program with an underlying two-year or

four-year degree. The rule also clarifies requirements for board approval of hearing aid specialist instruction.

WAC 246-828-615 Standards for hearing aid specialist programs

Rule Overview – The proposed rule implements provisions of EHB 2108 and the workgroup’s recommendations in the report to the legislature required by EHB 2108. The proposed changes add curriculum requirements for nine-month certificate programs to the already existing requirements for two-year degree programs. The proposed rules clarify the number of directly and indirectly supervised hours of practical experience each approved program must have in its curriculum.

Rule Cost/Benefit Analysis – The proposed changes ensure that educational programs set curriculum standards for hearing aid specialists to prepare them to provide care to the public and gain practical experience. Setting a minimum number of hours of directly and indirectly supervised practical experience and ensuring that earmold impressions are directly supervised protects the public and provides consistency with educational programs. The board determined that the minimum number of practical hours that should be required in hearing aid specialist educational programs be 520 hours, with at least 260 of those hours directly supervised. The number of hours was determined through discussion, comparison of existing two-year degree programs, and previous versions of legislation introduced during the 2014 legislative session.

Rule Cost/Benefit Conclusion

EHB 2108 created an alternate pathway to licensure for hearing aid specialists to qualify for licensure. The nine-month certificate program requirements needed to be added to existing rules in order for the board to approve the programs. Collectively, the benefits of establishing and updating standards for educational programs, board approval of educational programs, supervision, examinations, and continuing education ensure that applicants and credential holders receive, demonstrate, and maintain the education, experience, and training they need to ensure they are qualified to provide competent care in order to protect the public. Therefore, the total probable benefits of the rule exceed the total probable costs.

Identify alternative versions of the rule that were considered, and explain how the department determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated previously.

The rules were discussed as part of the report to the legislature required by EHB 2108. The board had six rulemaking workshops, held in Tumwater and Kent. Workshops were held on September 12, September 29, October 6, October 13, and November 21, 2014, and February 6, 2015. Notice of rulemaking workshops was sent to the listserv. Two workshops were held during board meetings and were noted on the board’s agenda. The agenda was sent to the listserv and posted on the program’s website.

During the rulemaking process, draft rules were sent for public comment and public participation was encouraged during workshops and meetings.

Although rules were developed collaboratively, there was one alternative version considered regarding WAC 246-828-075, Supervisors of students. During workgroup meetings and

development of the report to the legislature, the workgroup agreed to limit the number of hearing aid specialist students being supervised by an audiologist or hearing aid specialist to two. During the course of rules workshops, the board determined that it would increase that limit to three to ensure there were qualified supervisors available to supervise students.

Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.

The proposed rules do not require those to whom it applies to take an action that violates requirements of federal or state law.

Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

The board determined that the proposed rules do not impose more stringent performance requirements on private entities than on public entities.

Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.

The proposed rules do not differ from any applicable federal regulation or statute.

Demonstrate that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

There are no other applicable laws.